IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4627 OF 2004

Babu Govind Dongare & Anr ...Petitioners

Versus

Smt. Dhondubai w/o Maruti Dongare and Ors. ...Respondents

.....

Mr. G.N. Salunkhe with V.S. Katikar counsel for Petitioners

Mr. M.S. Lagu, counsel for Respondents 2 & 4.

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CORAM: B. H. MARLAPALLE, J.

DATED: 14TH MARCH, 2005

P. C.:-

1. Heard the learned counsel for the petitioners who are the plaintiffs in Regular Civil Suit No. 85 of 2003 filed before the learned C.J.J.D. at Ajara for the relief of injunction simplicitor. The application for temporary injunction filed below Exh.5 was rejected on 7.1.2004 and the same was challenged in Misc. Civil Appeal No. 2 of 2004 which came to be dismissed by the learned Additional District Judge at Gadhinglaj vide his judgment and order dated 26.3.2004 and hence, this petition.

2. The petitioners-plaintiffs had claimed that they have one third share in the suit property and the

respondent/defendant No.1 Smt. Dhondubai could not have disposed of her one third share from the joint property to the respondent/defendant No.4. The trial Court on the basis of the prima facie evidence recorded the findings that there was nothing to show that the plaintiffs had one third share in the suit property i.e. Block No. 1588. The defendant No.1 had disposed of her one third share to the defendant No.4 by registered sale deed dated 18.2.2000 for a consideration of Rs.7500/- and the mutation entry No. 1855 was effected on 28.3.2000. The suit was filed after about three years and that too without claiming the possession of one third share as claimed by the plaintiffs. The Lower appellate Court in addition to recording the confirmation of the reasoning given by the trial Court, noted that the plaintiffs did not bring the suit for partition and separate possession so as to enforce their rights and they did not also seek relief of declaring the sale as invalid. The relief prayed for was only of permanent injunction and the plaintiffs were not able to show any prima facie evidence regarding their possession. The documentary evidence as placed on record by the defendant No.1 do not show that the plaintiffs had any share in the suit property.

3. Under the circumstances, the concurrent findings recorded by both the Courts below do not call for any

interference under Article 227 of the Constitution of India.

4. Writ petition is rejected summarily. Ad interim order stands vacated. Trial of the suit is expedited.